

1 allow any rational trier of fact to find the essential elements of the crime beyond a reasonable
2 doubt.” *Id.*

3 **III. ANALYSIS**

4 A motion for judgment of acquittal must be brought within 14 days after the jury returns
5 its verdict. The Defendant was convicted by a jury on September 26, 2013 (ECF No. 354, 358),
6 but did not file his Motion for Judgment of Acquittal (ECF No. 451) until January 23, 2014,
7 almost four (4) months later. Therefore, the motion is not timely.

8 Nevertheless, as Defendant was permitted to proceed pro se, without counsel, and has
9 attempted to demonstrate excusable neglect, the Court will address the issue presented, especially
10 since Defendant essentially is merely renewing his previous claim. Likewise, Defendant failed to
11 file a Motion for Leave to file a Sur-Reply, but did attempt to provide an explanation. Thus, the
12 Court will not strike the filing.

13 First, Defendant argues that regarding Count 1, Conspiracy to Commit Bank Fraud, Mail
14 Fraud and Wire Fraud in violation of 18 U.S.C. § 1349, he was convicted of an offense that was
15 not charged when the Court permitted the Government to dismiss bank fraud as one of the three
16 objects of the conspiracy and strike the surplus language related to that bank fraud from the
17 Second Superseding Indictment. More specifically, when the conspiracy allegation no longer
18 alleged bank fraud, proof that a victim institution was federally insured was no longer relevant
19 and appropriately removed. However, the Defendant insists otherwise and fails to comprehend
20 that neither a conspiracy to commit mail fraud, nor a conspiracy to commit wire fraud, requires
21 proof that the institution was federally insured. (See Defendant’s Reply at 2, “...a financial
22 institution is an essential element of a separate and distinct mail and wire fraud crime that must
23 be proved beyond a reasonable doubt.”) Defendant’s argument is without merit.

24 Second, Defendant argues that the evidence presented at trial was insufficient because the
25 Government failed to present evidence at trial that any of the lender institutions defrauded by

1 wire and mail were actually financial institutions. Again, the Defendant's argument assumes an
2 additional element which is simply not required. Therefore, the Defendant's argument is without
3 merit.

4 **IV. CONCLUSION**

5 Defendant's conviction on Count 1, Conspiracy to Commit Wire Fraud and Mail Fraud,
6 did not require proof that the victims were lending institutions, as that is not an element of either
7 offense. Accordingly, Defendant has failed to demonstrate that a Judgment of Acquittal should
8 be granted.

9 **IT IS HEREBY ORDERED** that Defendant's Motion for Judgment of Acquittal (ECF
10 No. 451) is **DENIED**.

11 **DATED** this 11th day of March, 2014.

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16 Gloria M. Navarro, Chief Judge
17 United States District Court
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